IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3914 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PATEL ZALAK KANUBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DC DAVE for Petitioner(s) : 1,
MS ARCHNA RAVAL, AGP for Respondent(s) : 1 - 2,
NOTICE NOT RECD BACK for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 26/03/2007
ORAL JUDGMENT

(1) This petition has been filed by a student praying for following reliefs:

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A) That this Honourable Court be pleased to issue a writ of mandamus and or any other appropriate writ, order or direction, commanding respondent No.2-Admission Committee to accord approval to the admission of the petitioner at respondent No.3-

college for the current academic year 2006-2007 and, thereupon, to withdraw the aforesaid communication dated 31st January, 2007, a copy whereof figures at Exhibit 'D' to the petition to the extent the same pertains to and relates to the case of the petitioner;

B) *That, pending admission, hearing and final disposal of the present petition, this Honourable Court be pleased to stay the implementation and operation of the said communication dated 31st January, 2007, a copy whereof figures at Exhibit 'D' to the petition, to the extent the same relates and pertains to the petitioner and, thereupon, this Honourable Court be pleased to direct respondent No.2-Admission Committee to grant approval to the petitioner for the purpose of admission to respondent No.3-college;*

C) *That this Honourable Court be pleased to pass such other and further orders as the nature and circumstances of the case may demand*."

(2) In light of the view that the Court is inclined to adopt the petition is taken up for final hearing. RULE. The learned Additional Government Pleader is directed to waive service.

(3) The undisputed facts are that the petitioner obtained admission with respondent No.3-College in the management quota for academic year 2006-2007. It is the say of the petitioner that the petitioner had cleared the 12th Std. examination in Science stream conducted by the Gujarat Secondary and Higher Secondary Education Board, Gandhinagar in the month of March, 2006. Thereafter the petitioner had also appeared and cleared the Common Entrance Test known as GUJCET conducted in the month of April 2006. It is the case of the petitioner that respondent No.3-College sought endorsement of the 15 students admitted by respondent No.3-College in the management quota but respondent No.2-Committee, vide communication dated 31.01.2007, endorsed the list, except for the name of the petitioner. The reason for rejecting the name of the petitioner by respondent No.2-Committee was that the petitioner had not applied to respondent No.2-Committee and hence, the petitioner was not eligible to be admitted.

(4) Upon notice being issued, affidavit-in-reply has been filed on behalf of respondent No.2-Committee. In the

affidavit-in-reply it is stated that all the students applying under the management quota for admission to Technical Professional Courses were made aware of various conditions vide public advertisement published in different newspapers and hence, the petitioner having by-passed the channel of respondent No.2-Committee, was not entitled to be admitted.

(5) At the time of hearing on 22.03.2007, learned Additional Government Pleader appearing on behalf of respondent No.2-Committee was called upon to explain the rationale behind the condition of a student figuring in the merit list prepared by respondent No.2-Committee. It was submitted that the purpose was to ensure that no student, who is not meritorious and is otherwise not eligible, seeks admission in the management quota. Hence, to ensure that factually the petitioner-student fulfilled the relevant eligibility criteria, the following order was made by the Court on 22.03.2007:

> *"The learned AGP appearing on behalf of the respondent Joint Admission Committee For Professional Courses (Technical) states that the*

> *committee shall examine the merits of the petitioner-student and shall report by the next date. To be listed on 26th March, 2006.*"

(6) The learned Additional Government Pleader has placed on record a copy of report dated 26.03.2007 whereunder it is stated by respondent No.2-Committee:

> "The committee had received the documents regarding the eligibility and the attendance report of the student, the copy of which is attached here for your reference. The student found eligible as per rule no. 4 of Admission Rules of the year 2006-07. As per the guidelines provided by Justice (Retd.) R.J. Shah Fee and Admission committee the applications invited by the institute from students listed in JAC PC (T) merit list, hence according to this guidelines the committee had not endorsed her admission in spite of fulfilling eligibility criterion."

(7) In the aforesaid circumstances, it is apparent that the petitioner-student has been found to be eligible as per Rule No.4 of the Admission Rules for the year 2006-2007. The only reason why the name of the petitioner was not endorsed in the list of admitted students is violation of condition imposed in guidelines of routing an application through respondent No.2-Committee.

(8) Though the learned advocate for the petitioner has invited attention to an order made by this Court in a group of matters in the case of *Parmar Sanjay Arvindbhai & Ors. Vs. State of Gujarat & Ors.*, in Special Civil Application No.17385 of 2006 and cognate matters whereunder similar condition in relation to admission to P.T.C. Courses has been quashed and set aside by this Court, it is not necessary to go that far for the present. Once the underlying purpose for imposing the condition is considered and the facts reveal that the said purpose stands fulfilled, even if the condition remains as a part of the guidelines, the petitioner cannot be deprived of the admission on that solitary count.

(9) In the aforesaid set of facts and circumstances of the case it is apparent that the breach, if any, made by the petitioner-student of the conditions, more particularly condition of applying in the management quota after being registered with respondent No.2-Committee, is at the most a technical and venial breach. For such a breach there cannot be a consequence which would result in putting the entire career of a student in

jeopardy. It is the settled legal position that a rule has to be applied and made effective so as to ensure that the rule advances cause of substantial justice and a procedural lapse cannot be permitted to govern so as to frustrate the cause of justice.

(10) In the aforesaid circumstances the communication, whereunder the admission of the petitioner to respondent No.3-College was cancelled, is hereby quashed and set aside. Respondent No.3-College is directed to ensure that the petitioner-student is permitted to continue her studies without any interruption, subject to fulfillment of all other relevant Rules.

(11) The petition is allowed accordingly in the aforesaid terms. Rule made absolute to the aforesaid extent. Considering the fact that the litigation is as a result of a lapse on part of the petitioner, it would be in the fitness of things if the petitioner is directed to bear the costs of the litigation. Hence, the petitioner is directed to pay costs quantified at a sum of Rs.1,000/- to respondent No.2-Committee.

[D.A. MEHTA, J]

Bhavesh*